



444

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

8 DATED THIS THE 4TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE V.GOPALA GOWDA

WRIT PETITION No. 17778/1994

BETWEEN:

Imamhussain s/o Madarsaheb Desai,
Age: 61yrs., r/o Mallapur.S.A.,
Tq: Gokak, Dist. Belgaum.

.. Petitioner

(By Sri Ravi S Balikai, Adv.,)

AND:

1. The Land Tribunal, Gokak,
by its Chairman, Gokak,
Dist. Belgaum.
2. The State of Karnataka by
its Secretary to the Revenue
Dept., M.S.Building, Dr.Ambedkar
Road, Bangalore-1.

3. Usmansab | Both s/o Sahebkhani Desai,
4. Bashirahmed, | majors, r/o Ankalagi,
| Tq:Gokak, Dist.Belgaum.

5. Kashimsaheb | All s/o Husseinasaheb,
6. Razaksaheb | Desai, All majors,
7. Dastagirsahab | r/o Mallapur S.A., Tq:
| Gokak, Dist. Belgaum.

8. Noormohammad s/o Imamsab Desai,
Age: major, r/o Mallapur S.A.,
Tq:Gokak, Dist. Belgaum.

.. Respondents

(By Sri Anant Mandgi, Adv., for R3 to R8;
Smt.Bharathi Nagesh, AGA, for R1 & R2)

This Writ Petition filed under Articles 226 and 227 of the Constitution of India, praying to quash the order passed by the L.T.Gokak dt.1.6.1994 vide Annexure-A and etc.,

This Writ Petition coming on for hearing this day, the Court made the following:-

O R D E R

On a short ground the impugned order is liable to be quashed. The petitioner who is a claimant before the Land Tribunal filed Form No.7 application claiming occupancy rights in respect of the following lands situated in Gokak Taluk, Belgaum District.

<u>VILLAGE</u>	<u>SY.NO.</u>	<u>AREA</u>
		A-Gs.
Mallapur S.A.	18/22B	0-16
-do-	27/25B	0-07
-do-	27/22	0-08
-do-	27/13	0-13
-do-	17/21B	0-06
-do-	27/23B	0-20

2. The Tribunal has rejected the claim of the petitioner vide impugned order holding that the lands in question are not tenanted lands. The Tribunal holds that the claimant and the respondents 3 to 8 are relatives therefore, the petitioner has not established the tenancy rights. The Land Tribunal further, placed reliance on the basis of the affidavit submitted by Dundappa Somalingappa Malagalali to establish the fact that there was a compromise between the petitioner and the contesting respondents herein thereby ^{it has} considered ~~on the~~ impermissible document which has vitiated the impugned order. Further, the learned counsel for the petitioner submits that, documentary evidence placed before the Tribunal namely the land revenue receipts issued by the competent authorities for the period from 1968 onwards and further the entries in the RTC records in respect of the lands in question ^{have} have not been taken into consideration holding

that the RTC entries are not correct entries and same are illegal and he would submit that ~~the~~ finding^{are} ~~is~~ not based on the evidence on record.

Therefore, the Tribunal has not given cogent and valid reasons in support of its findings with regard to the fact that lands in question are tenanted lands and therefore the order passed by the Tribunal is erroneous in law as it had failed to consider the positive and substantive evidence placed on record. Learned counsel further submits that the impugned order is not preceded by a proper, Legal and valid enquiry required to be conducted under Rule 17 of the Karnataka Land Reforms Rules read with Sec,34 of the Karnataka Land Revenue Act, 1964. Therefore he further submits that, the order passed by the Land Tribunal is liable to be quashed.

3. Smt.Latha Prasad, learned counsel appearing for the respondents submits that, the impugned

order does not call for interference by this court as the Tribunal has taken into consideration all the material evidence on record and further she submits that the findings given by the Tribunal are based on legal evidence on record and therefore, this Court should not exercise extraordinary supervisory discretion in interfering with the impugned order. Smt. Bharathi Nagesh, learned AGA sought to justify the impugned order by submitting that it is valid and legal.

4. I have carefully considered the submission of the learned Counsel appearing for the parties. I have perused the impugned order. The Tribunal has placed reliance on the affidavit of Dundappa Somalingappa Malagalali with regard to the alleged compromise said to have been entered by the petitioner with the contesting respondent, with regard to the claim of his tenancy in respect of the lands in question. In law, the said compromise is opposed to law, hence same is not binding on the petitioner. The Tribunal



mechanically accepted such impermissible document and given a finding holding that the lands in question are not tenanted Lands and the petitioner is not a **tenant**. Therefore, the finding is erroneous in law. Apart from this, the Tribunal except giving finding on the relevant issues, it has not taken into consideration the facts and evidence on record to give categorical findings with regard to the lands in question as to whether the lands are tenanted immediately prior to or as on 1.3.1974 and the petitioner is a tenant or not. The findings of the Tribunal are not supported by valid and cogent reasons. Therefore, I am of the opinion that, the impugned order is not a speaking order. Hence, I pass the following order:

Writ petition is allowed. Impugned order is quashed. The matter is remitted back to the

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450

Tribunal with a direction to conduct an enquiry as contemplated in law after affording reasonable opportunity to both the parties and determine the rights of the parties within six months from the date of receipt of this order.

Smt. Bharathi Nagesh, learned AGA is permitted to file memo of appearance within four weeks.

Sd/-
JUDGE

sk/
hba/

